UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

THE GUARDIAN LIFE INSURANCE COMPANY OF AMERICA,
7 Hanover Square
New York, NY 10004,

Plaintiff,

v.

ESTATE OF EDWARD A. KOHLS

CODY A. KOHLS
Eau Claire County Jail
710 Second Avenue
Eau Claire, WI 54703

JENNIFER POWERS, individually, and as **Special Administrator of the Estate of Edward Kohls**
1465 3½ Ave.
Dallas, WI 54733

BRUCE A. KOHLS
610 Hudson St.
Eau Claire, WI 54703

LAURIE R. KOHLS
501 W. Central Ave.
Unit #A
Chippewa Falls, WI 54729

TAMMI MORKEN
3274 White Oak Ln.
Eau Claire, WI 54703

Defendants.

Case No. 17-cv-427

COMPLAINT IN INTERPLEADER

Plaintiff, The Guardian Life Insurance Company of America ("Plaintiff" or "The Guardian"), through undersigned counsel, does hereby file this Complaint in Interpleader and states as follows:

I. PARTIES

1. The Guardian is a corporation organized under the laws of the State of New York, with its principal place of business in the State of New York.

2. Upon information and belief, the Estate of Edward A. Kohls, was opened in the State of Wisconsin, Circuit Court of Eau Claire County, Register in Probate, Case Number 17PR14.

3. Upon information and belief, defendant Cody A. Kohls, is the son of Edward A. Kohls, and a citizen of the State of Wisconsin and a resident of Eau Claire, Wisconsin.

4. Upon information and belief, defendant Jennifer Powers, is the sister of Edward A. Kohls, and a citizen of the State of Wisconsin and a resident of Dallas, Wisconsin. Jennifer Powers is also the court-appointed Special Administrator of the Estate of Edward A. Kohls.

5. Upon information and belief, defendant Bruce Kohls, is the brother of Edward A. Kohls, and a citizen of the State of Wisconsin and a resident of Eau Claire, Wisconsin.

6. Upon information and belief, defendant Laurie Kohls, is the sister of Edward A. Kohls, and a citizen of the State of Wisconsin and a resident of Chippewa Falls, Wisconsin.

7. Upon information and belief, defendant Tammi Morken, is a citizen of the State of Wisconsin and a resident of Eau Claire, Wisconsin.

II. JURISDICTION AND VENUE

8. This is an interpleader action brought pursuant to Rule 22 of the Federal Rules of Civil Procedure.

9. This Court has original federal question jurisdiction over this action, pursuant to 28 U.S.C. § 1331 and 29 U.S.C. § 1132(e)(1) because this action arises under the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), 29 U.S.C. § 1001, *et seq.*, a law of the United States.

10. This Court also has federal jurisdiction under 28 U.S.C. §1332 because the plaintiff and defendants are citizens of different States and the matter in controversy exceeds the sum or value of $75,000, exclusive of interest and costs.

11. Venue is proper pursuant to 29 U.S.C. §1132(e)(2) and 28 U.S.C. § 1391, because at least one of the defendants resides in this District.

III. FACTUAL BACKGROUND

12. Edward A. Kohls ("Decedent") was a former employee of Curt Manufacturing, LLC ("Employer"), and a participant in an ERISA-regulated life insurance plan ("Plan").

13. Benefits under the Plan ("Plan Benefits") were funded, at least in part, by one or more group policies of life insurance ("Policy" or "Policies"), issued by The Guardian to the Employer.

14. The Guardian, as the Plan's claim administrator, must administer claims under the Plan in accordance with ERISA and the documents and instruments governing the Plan. 29 U.S.C. § 1104(a)(1)(D).

15. The Guardian is a fiduciary for purposes of making claims determinations under the Plan and may bring this action pursuant to ERISA, 29 U.S.C. § 1132(a)(3).

16. ERISA defines a beneficiary as "a person designated by a participant, or by the terms of an employee benefit plan, who is or may become entitled to a benefit thereunder." 29 U.S.C. § 1002(8).

17. Plan and Policy documents establish the right of a Plan participant to name his or her beneficiary, and state that benefits will be paid to the designated beneficiary. True and correct copies of the relevant plan documents are attached hereto as Exhibit A.

18. Decedent died on December 28, 2016. A true and correct copy of the Decedent's death certificate is attached hereto as Exhibit B.

19. The death certificate indicates that Decedent's immediate cause of death was due to anoxic brain injury and manual strangulation applied by another during a physical altercation. *See* Exhibit B.

20. At the time of his death, the Decedent was enrolled under the Plan for basic term life insurance coverage and basic accidental death and dismemberment ("AD&D") in the amount of $40,000. The Decedent was also enrolled under the Plan for optional term life insurance for $80,000, and voluntary AD&D coverage in the amount of $80,000.

21. Pursuant to all the applicable terms and conditions of the Plan, Decedent was insured for a total amount of $200,000.

22. Upon information and belief, Decedent executed multiple enrollment/beneficiary designation forms, most recently on December 4, 2016. A copy of the Decedent's December 4, 2016 enrollment form is attached hereto as Exhibit C.

23. Decedent's most recent beneficiary designation form was signed on December 4, 2016. It lists five (5) Primary Beneficiaries as follows: Cody Kohls 75%; Tammi Morken 10%; Bruce Kohls 5%; Laurie Kohls 5%; and Jen Powers 5%. *See* Exhibit C.

24. Defendants Tammi Morken, Bruce W. Kohls, Laurie R. Kohls, and Jennifer Powers submitted claim forms for the Plan Benefits, upon which The Guardian distributed the allocated percentages of Plan Benefits as designated by the Decedent, with applicable interest thereto. True and correct copies of the claim forms are attached hereto as Exhibit D.

25. The Guardian has not distributed the remaining 75% ($150,000) portion of the Plan Benefits to defendant Cody A. Kohls or any other potential beneficiary.

26. Upon information and belief, defendant Cody A. Kohls was charged with First Degree Reckless Homicide and Aggravated Battery causing the death of Decedent.

27. Upon information and belief, defendant Cody A. Kohls has pled "not guilty" to all charges related to the death of Decedent.

28. Upon information and belief, defendant Cody A. Kohls is currently being held in the Eau Claire County Jail, inmate No. 24595, awaiting criminal trial.

29. The Guardian cannot determine whether a court would find that it should pay defendant Cody A. Kolhs any of the Plan Benefits, or whether he has forfeited all rights to the Plan Benefits.

30. The Guardian cannot determine whether a court would find that it should pay the remaining Plan Benefits to one or more of Decedent's various other Primary Beneficiaries and it cannot determine how the remaining Plan Benefits should be divided.

31. Consequently, conflicting issues of fact and law exist as to the proper beneficiary of the Plan Benefits and The Guardian has, therefore, been unable to determine who is entitled to the Plan Benefits without risking potential exposure of itself, the Employer, and the Plan to multiple liabilities.

32. The Guardian is now, and at all times has been, ready and willing to pay the Plan Benefits to the party legally entitled to them.

33. The Guardian is merely a stakeholder and claims no beneficial interest in the Plan Benefits, except for the payment of its reasonable attorneys' fees and costs incurred in bringing this action for interpleader.

34. The Guardian cannot determine the proper beneficiary of the Plan Benefits without assuming the responsibility of determining doubtful questions of fact and law, and without incurring the risk of being subject to costs and expenses in defending itself in multiple suits or the possibility of multiple payments of the amount due.

WHEREFORE, The Guardian respectfully requests that the Court:

A. Permit The Guardian to pay the Plan Benefits, plus any applicable interest into the Registry of this Court;

B. Order all defendants to answer and present their claims to the Plan Benefits;

C. Issue an Order enjoining and restraining defendants from instituting or prosecuting any action or proceeding in any State or United States court against The Guardian, the Employer, or the Plan for the recovery of the Plan Benefits, plus any applicable interest or any portion thereof;

D. Dismiss The Guardian with prejudice from this action, and discharge The Guardian, the Employer, and the Plan from any further liability upon payment of the Plan Benefits, plus any applicable interest, into the Registry of this Court, or as otherwise directed by this Court;

E. Permit The Guardian to recover its costs and attorney's fees in connection with this action; and

F. Order such other and further relief as this Court deems just and proper.

Respectfully submitted,

s/Rebecca K. Bryant

Mark E. Schmidtke
IN. Bar No. 1733-45
OGLETREE, DEAKINS, NASH,
SMOAK & STEWART, P.C.
56 S. Washington St., Suite 302
Valparaiso, IN 46383
Phone: (219) 242-8668
Fax: (219) 242-8669
mark.schmidtke@ogletreedeakins.com

Rebecca K. Bryant
IL ARDC No. 6318098
OGLETREE, DEAKINS, NASH,
SMOAK & STEWART, P.C.
155 N. Wacker Drive, Suite 4300
Chicago, IL 60606
Phone: (312) 558-1252
Fax: (312) 807-3619
rebecca.bryant@ogletreedeakins.com

Attorneys for The Guardian Life Insurance Company of America

29965122.1